Supreme Court, U.S.
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No. 93-870

In The
Supreme Court of the United States
October Term, 1993

LEVALD, INC., a Wisconsin Corporation, Trustee of Indian Springs Trust,

Petitioner,

vs.

CITY OF PALM DESERT, a California Municipal Corporation,

Respondent.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

JERROLD A. FADEM
KEITH W. DOUGLAS
ANDREW H. KOPKIN
Counsel of Record
FADEM & DOUGLAS
A Professional Corporation
12424 Wilshire Boulevard, Suite 900
Post Office Box 250050
Los Angeles, California 90025
(310) 207-2727

Attorneys for Petitioner

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INTRODUCTION

Petitioner Levald, Inc., a Wisconsin Corporation, Trustee of the Indian Springs Trust (Levald) replies, pursuant to Supreme Court Rule 15.6, to respondent City of Palm Desert, a California Corporation's (City) Opposition (Opposition) to Levald's Petition for Writ of Certiorari (Petition) in which the City resists the Petition by arguing that the judgment in the case at bench lacks finality.

The City's argument fails as the judgment is final.

The Ninth Circuit affirmed the United States District Court for the Central District of California's (District Court) decision. (Petition, P 1, 2, and App A) The Ninth Circuit remanded to the District Court for the District Court to, in the City's own words, "state [the District Court's] . . . reasons" for denying leave to amend Levald's Complaint.[1]

The Ninth Circuit later denied Levald's Petition for Rehearing and Suggestion of Appropriateness for Rehearing En Banc. (Petition, P 1, 2, and App B)

The judgment in the case at bench is final. The City's claim that "[a] grant of certiorari at this time could result in piecemeal litigation" (Opposition, P 10) is specious.

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[1] The City concedes that "a portion of this case was reversed and remanded because the lower court failed to state its reasons for denying Levald's motion for leave to amend its substantive due process claim . . . ." (Opposition, P 10)

THE JUDGMENT IS FINAL

The judgment is final. Here, unlike the cases on which the City relies in its Opposition, the District Court has power only to **explain** the District Court's denial of leave to amend. [2]

The City relies on *Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook Railroad Co.* (1967) 389 US 327 and *Virginia Military Institute v. United States* (1993) __US __, 113 S Ct 2431, 124 L Ed 2d 651, 651-652 for the proposition that "[t]his Court has refused to grant a Petition for Certiorari solely on the grounds that a judgment below is not final." (Opposition, P 9)

However, neither *Aroostook* nor *Virginia Military* are apposite to the case at bench, because in both *Aroostook* and *Virginia Military* remand required the lower court to reconsider a portion of the decision and thereby modify or alter the judgment for which certiorari had been sought.

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2 Levald's appeal "confer[red] jurisdiction on the court of appeals and divest[ed] the district court of its control over those aspects of the case involved in the appeal." (*Griggs v. Provident Consumer Discount Co.* [1982] 459 US 56, 58)

Thus, in *Aroostook:*

> "The Court of Appeals ruled on various legal issues presented to it but remanded to the District Court to consider whether there had in fact been a contempt, and also, if there was a contempt, whether it was 'of such magnitude as to warrant retention, in part or to any extent, of the coercive fine originally provided for in contemplation of an outright refusal to obey.' " (389 US at 328)

In *Virginia Military:*

> "The Court of Appeals vacated the judgment that had been entered in favor of petitioners, and remanded the case to the District Court for determination of an appropriate remedy." (124 L Ed 2d at 651)

Here, unlike *Aroostook* and *Virginia Military*, the Ninth Circuit affirmed the entire judgment of the District Court. (Petition, App A) The remand to the District Court was solely for an **explanation**:

> "Since the district court did not provide an explanation for its refusal to allow Levald to amend its complaint and since its reasons are not apparent from the record, we conclude that the district

> court abused its discretion in failing to explain its reasons for denying leave to amend the complaint. **We thus remand for explanation**." (Petition, App A, P 30; emphasis added.)

The Ninth Circuit did not direct that the District Court do anything other than explain the District Court's denial of leave to amend.

As the judgment is final, there is no danger here of "piecemeal litigation."

The City strategically deletes the words (bolded below) from its quotation to *American Construction Co. v. Jacksonville T & K.W. Ry. Co.* (1893) 148 US 372, 384:

> "[T]his court should not issue a writ of certiorari to review a decree of the circuit court of appeals or appeal **from an interlocutory order,** unless it is necessary to prevent extraordinary inconvenience and embarrassment in the conduct of the cause." (148 US at 384)

As there is no "interlocutory order" at issue here, the City's reliance on *American Construction* is unavailing. [3]

The Ninth Circuit's decision here is a "final decree."

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[3] The City's reliance on *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.* (1916) 240 US 251, 258 is also unavailing, as in *Hamilton Brown* there was no final decree.

CONCLUSION

The judgment in the case at bench is final.

This Court's guidance is needed. Levald prays that certiorari be granted or the matter be remanded to the Ninth Circuit for reconsideration under the precedents in Levald's Petition.

Respectfully submitted,

FADEM & DOUGLAS
A Professional Corporation

JERROLD A. FADEM
KEITH W. DOUGLAS
ANDREW H. KOPKIN
Counsel of Record

Attorneys for Petitioner
Levald, Inc.